

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

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IVAN G. MCKINNEY,

Plaintiff,

v.

Dr. HEMSLEY, et al.,

Defendants.

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Civ. No. 14-3564 (KM)

**MEMORANDUM AND ORDER**

Plaintiff, Ivan G. McKinney, appeals from an Order of Magistrate Judge James B. Clark, III, denying his application for appointment of *pro bono* counsel. This, one of many civil rights actions Mr. McKinney has pending in this district, primarily involves allegations regarding the quality of medical care and other grievances arising from his former incarceration at Bergen County Jail.

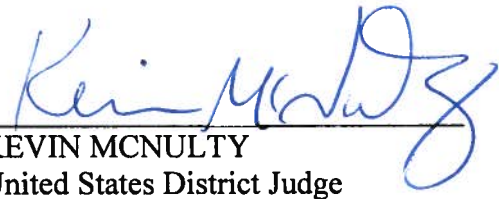
The District Court will reverse a Magistrate Judge's decision on a non-dispositive motion only if it is "clearly erroneous or contrary to law." Fed. R. Civ. P. 72(a); L. Civ. R. 72.1(c)(1)(A). Where the appeal seeks review of a matter within the discretion of the Magistrate Judge, an abuse of discretion standard is appropriate. *See Cooper Hospital/Univ. Med. Ctr. v. Sullivan*, 183 F.R.D. 119, 127 (D.N.J. 1998); *Deluccia v. City of Paterson*, No. 09-703, 2012 WL 909548, at \*1 (D.N.J. March 15, 2012). "This deferential standard is especially appropriate where the Magistrate Judge has managed this case from the outset and developed a thorough knowledge of the proceedings." *Lithuanian Commerce Corp., Ltd. v. Sara Lee Hosiery*, 177 F.R.D. 205, 214 (D.N.J. 1997)(internal quotations omitted); *see Deluccia*, 2012 WL 909548, at \*1 (same).

Judge Clark's Order (ECF no. 37) properly invokes the applicable legal standard under *Tabron v. Grace*, 6 F.3d 147, 155 (3d Cir. 1993). Appointment of *pro bono* counsel is a

discretionary decision that will depend on the circumstances and the progress of the individual case. Judge Clark noted that I had denied an earlier request for *pro bono* counsel without prejudice to renewal, “depending on the development of the claims and the facts in the pretrial discovery process.” (Order at 2, quoting ECF no. 5 at 18) Discovery remains in its early stages. It seemed to Judge Clark, and I agree, that the situation had not changed sufficiently to dictate appointment of counsel at this time. Among other things, it is still difficult or impossible to make even a preliminary assessment of the merits.

Accordingly, IT IS this 14th day of December, 2016,

ORDERED that the appeal (ECF no. 39) is DENIED, and the Order of Magistrate Judge Clark (ECF no. 37) is AFFIRMED, for the reasons expressed in that Order.

  
KEVIN MCNULTY  
United States District Judge